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Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RALPH SARACENI, derivatively on
behalf of POLYCOM, INC.,

Plaintiff,

v.

ANDREW M. MILLER, BETSY S.
ATKINS, JOHN A. KELLEY, D. SCOTT
MERCER, WILLIAM A. OWENS, and
KEVIN T. PARKER,

Defendants,

and

POLYCOM, INC.,

Nominal Defendant.

Case No.: 3:13-cv-03880-SC

**STIPULATION AND ~~PROPOSED~~
ORDER CONSOLIDATING ACTIONS
AND APPOINTING LEAD COUNSEL**

Case Filed: August 21, 2013

1 JAMES DONNELLY, derivatively on
behalf of POLYCOM, INC.,

2 Plaintiff,

3 v.

4 ANDREW M. MILLER, BETSY S.
5 ATKINS, JOHN A. KELLEY, D. SCOTT
6 MERCER, WILLIAM A. OWENS, and
KEVIN T. PARKER,

7 Defendants,

8 and

9 POLYCOM, INC.,

10 Nominal Defendant.

Case No.: 5:13-cv-04810-PSG

Case Filed: October 16, 2013

1 **WHEREAS**, there are presently two shareholder derivative actions against certain
2 current and former directors and officers of Polycom, Inc. (“Polycom”): *Saraceni v. Miller et*
3 *al.*, Case No. 3:13-cv-03880-SC, currently pending before this Court (the “*Saraceni* Derivative
4 Action”); and *Donnelly v. Miller et al.*, Case No. 5:13-cv-04810-PSG, currently pending in the
5 United States District Court for the Northern District of California, and initially/currently
6 assigned to Magistrate Judge Paul Singh Grewal (the “*Donnelly* Derivative Action”)
7 (collectively, “the Polycom Derivative Actions”);

8 **WHEREAS**, pursuant to the Court’s September 13, 2013 Order (Document No. 18),
9 the *Saraceni* Derivative Action has been related to a class action filed under the federal
10 securities laws currently pending before this Court: *Neal v. Polycom, Inc. et al.*, Case No.
11 3:13-cv-03476-SC (the “*Neal* Class Action”);

12 **WHEREAS**, Polycom, Eric Brown, and Sayed Darwish have filed an Administrative
13 Motion to Relate the *Donnelly* Derivative Action to the *Neal* Class Action and the *Saraceni*
14 Derivative Action, pursuant to which it has requested that the *Donnelly* Derivative Action be
15 reassigned to The Honorable Samuel Conti;

16 **WHEREAS**, in an effort to assure consistent rulings and decisions and the avoidance
17 of unnecessary duplication of effort, the undersigned counsel for the parties in the Polycom
18 Derivative Actions submit this stipulation consolidating actions; and

19 **WHEREAS**, Johnson & Weaver, LLP seeks to be designated as Lead Counsel in the
20 Polycom Derivative Actions, once consolidated, and Defendants take no position with respect
21 to such designation.

22 **WHEREFORE**, the parties, through their undersigned counsel, hereby agree,
23 stipulate, and respectfully request that the Court enter an Order as follows:

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1 1. The following actions shall be consolidated for all purposes, including pre-trial
2 proceedings and trial:¹

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
<i>Saraceni v. Miller et al.</i>	3:13-cv-03880-SC	August 21, 2013
<i>Donnelly v. Miller et al.</i>	5:13-cv-04810-PSG	October 16, 2013

6 2. Every pleading filed in these consolidated actions, or in any separate action
7 included herein, must bear the following caption:

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 IN RE POLYCOM, INC. DERIVATIVE 11 LITIGATION	Lead Case No.: 3:13-cv-03880-SC (Derivative Action)
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12 This Document Relates To:
13 ALL ACTIONS.

15 3. The files of these consolidated actions will be maintained in one file under Lead
16 Case No. 3:13-cv-03880-SC.

17 4. Lead Counsel for plaintiffs for the conduct of *In re Polycom, Inc. Derivative*
18 *Litigation*, Lead Case No. 3:13-cv-03880-SC, is designated as follows:

19 JOHNSON & WEAVER, LLP
20 FRANK J. JOHNSON
21 SHAWN E. FIELDS
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23 San Diego, CA 92101
24 Telephone: (619) 230-0063
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26 5. The parties agree that plaintiffs' Lead Counsel has authority to speak for
27 plaintiffs in matters regarding pre-trial procedure, trial, and settlement negotiations and shall
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¹ For clarity, the *Neal* Class Action should not be consolidated with the *Saraceni* Derivative Action and/or the *Donnelly* Derivative Action. While the actions are related under Civil Local Rule 3-12, they are not suitable for consolidation because the *Neal* Class Action alleges violations of the federal securities laws *against* Polycom, whereas the Polycom Derivative Actions bring claims purportedly *on behalf of* Polycom.

1 make all work assignments in such manner as to facilitate the orderly and efficient prosecution
2 of this litigation and to avoid duplicative or unproductive effort.

3 6. The parties agree that plaintiffs' Lead Counsel will be responsible for
4 coordinating all activities and appearances on behalf of plaintiffs and for the dissemination of
5 notices and orders of this Court. The parties further agree that no motion, request for
6 discovery, or other pre-trial or trial proceedings will be initiated or filed by any plaintiffs
7 except through plaintiffs' Lead Counsel.

8 7. The parties agree that defendants' counsel may rely upon all agreements made
9 with plaintiffs' Lead Counsel, or other duly authorized representative of plaintiffs' Lead
10 Counsel, and such agreements will be binding on plaintiffs.

11 8. This Order shall apply to each purported derivative action arising out of the
12 same or substantially the same transactions or events as the Polycom Derivative Actions,
13 which is subsequently filed in, removed to, or transferred to this Court.

14 9. When a case that properly belongs as part of *In re Polycom, Inc. Derivative*
15 *Litigation*, Lead Case No. 3:13-cv-03880-SC, is hereafter filed in this Court or transferred here
16 from another court, counsel shall promptly call to the attention of the Clerk of the Court the
17 filing or transfer of any case that might properly be consolidated as part of *In re Polycom, Inc.*
18 *Derivative Litigation*, Lead Case No. 3:13-cv-03880-SC.

19 10. In the interest of efficiency and avoidance of unnecessary duplication of effort
20 or judicial resources by the Court or the parties, it is further Ordered as follows:

21 (a) Defendants are not required to respond to either complaint consolidated
22 into this action, or to the complaint in any action subsequently
23 consolidated into this action, other than an amended or consolidated
24 complaint (or complaint subsequently designated as the operative
25 complaint);

26 (b) Within thirty (30) days of the entrance of an order consolidating the
27 Polycom Derivative Actions, plaintiffs in this action shall file an
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1 amended or consolidated complaint (or designate an operative
2 complaint) in this action;

3 (c) Within ten (10) days of plaintiffs filing of an amended or consolidated
4 complaint (or designation of an operative complaint) in this action,
5 plaintiffs' counsel and counsel for Defendants shall meet and confer
6 regarding a mutually agreeable schedule and dates by which defendants
7 must answer, move to dismiss, or otherwise respond to the amended or
8 consolidated (or operative) complaint and file a stipulated briefing
9 schedule with the Court for approval; and

10 (d) The Initial Case Management Conference in the *Donnelly* Derivative
11 Action, currently scheduled for January 28, 2014, and the additional
12 deadlines set forth in the Order Setting Initial Case Management
13 Conference and ADR Deadlines (dated October 17, 2013), are hereby
14 vacated, and the Initial Case Management Conference in the
15 consolidated action shall instead be set for December 20, 2013, at 10:00
16 a.m., the date and time of the currently scheduled Initial Case
17 Management Conference in the *Saraceni* Derivative Action.

18 **IT IS SO STIPULATED.**
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1 Dated: October 29, 2013

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11 *Attorneys for Plaintiffs Ralph Saraceni and*
12 *James Donnelly*

11 Dated: October 29, 2013

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23 *Attorneys for Defendants Betsy S. Atkins,*
24 *John A. Kelley, D. Scott Mercer, William*
25 *A. Owens, Kevin T. Parker, and Nominal*
26 *Defendant Polycom, Inc.*

1 Dated: October 29, 2013

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Attorneys for Defendant Andrew M. Miller

10 *I am the ECF user whose identification and password are being used to file the*
11 *foregoing Stipulation and [Proposed] Order Consolidating Actions and Appointing Lead*
12 *Counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the*
13 *filing of this document has been obtained.*

14 Dated: October 29, 2013

15 s/ Frank J. Johnson
16 FRANK J. JOHNSON (SBN 174882)

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21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22
23 Dated: 10/31, 2013

24 HON. SAMUEL CONTI
25 UNITED STATES DISTRICT COURT
26 NORTHERN DISTRICT OF CALIFORNIA

